

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 21-cr-108 (PAM/TNL)

Plaintiff,

v.

**AMENDED ARRAIGNMENT
NOTICE AND SCHEDULING
ORDER**

Tou Thao (2),
J. Alexander Kueng (3), and
Thomas Kiernan Lane (4),

Defendants.

I. GENERAL ORDER NO. 28

Beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.¹ On April 29, 2021, Chief Judge Tunheim entered General Order No. 28, which allows limited in-person proceedings to start on May 3, 2021, for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 28 (D. Minn. Apr. 29, 2021).

General Order No. 28 states that because only limited in-person proceedings may be held

¹ All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 28 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.² General Order No. 28 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, on or before June 4, 2021, counsel shall also file a letter indicating whether Defendant consents to arraignment and a motions hearing by videoconference.**

II. ARRAIGNMENT

PLEASE TAKE NOTICE that, subject to further order of the Court, an arraignment hearing will be held before the undersigned United States Magistrate Judge on **July 14, 2021** at **9:00 a.m.**, in **Courtroom 9W**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota 55415.

² See also General Order No. 27, which went into effect on March 25, 2021, vacated General Order No. 24, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 27 (D. Minn. Mar. 24, 2021).

III. SCHEDULE

FURTHER, IT IS HEREBY ORDERED that the following schedule shall govern these proceedings:

1. The government shall make all disclosures required by Federal Rule of Criminal Procedure 16(a) by **May 21, 2021**. D. Minn. LR 12.1(a)(1). In order to avoid the need for a recess of the motions hearing, the government is requested to make, by **May 21, 2021**, all disclosures which will be required by Fed. R. Crim. P. 26.2 and 12(h).

2. Pursuant to the Due Process Protections Act, the Court confirms the government's obligation to disclose to Defendant all exculpatory evidence- that is, evidence that favors Defendant or casts doubt on the government's case, as required by *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and orders the government to do so. Failure to do so in a timely manner may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, disciplinary action, or sanctions by the Court.

3. Defendant shall make all disclosures required by Federal Rule of Criminal Procedure 16(b) by **May 28, 2021**. D. Minn. LR 12.1(a)(2).

4. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **June 4, 2021**.³ D. Minn. LR

³ "Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The parties must attempt in good faith to clarify and narrow the issues in dispute." D. Minn. LR 12.1(b).

12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Tony N. Leung.⁴

5. **Counsel shall also file a letter on or before June 4, 2021, indicating whether Defendant consents to arraignment and a motions hearing by videoconference.**

6. **Counsel shall electronically file a letter on or before June 4, 2021, if no motions will be filed and there is no need for hearing.**

7. All responses to motions shall be filed by **June 18, 2021**. D. Minn. LR 12.1(c)(2).

8. Any Notice of Intent to Call Witnesses³ shall be filed by **June 18, 2021**. D. Minn. LR. 12.1(c)(3)(A).

9. Any Responsive Notice of Intent to Call Witnesses⁴ shall be filed by **June 23, 2021**. D. Minn. LR 12.1(c)(3)(B).

10. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The government makes timely disclosures and Defendant pleads particularized matters for which an evidentiary hearing is necessary; or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

⁴ U.S. Mail or hand-deliver to 300 South Fourth Street, Suite 9W, Minneapolis, MN 55415.

³ “When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim. P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(A).

⁴ “If after reviewing a notice under LR 12(c)(3), a party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive party must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(B).

11. If required, the motions hearing shall be heard before Magistrate Judge Tony N. Leung on **July 14, 2021**, at **9:00 a.m.**, in **Courtroom 9W**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota. D. Minn. LR 12.1(d).

12. **TRIAL:**

a. **IF NO PRETRIAL MOTIONS ARE FILED BY DEFENDANT, the following trial and trial-related dates are:**

All voir dire questions and jury instructions must be submitted to District Judge Paul A. Magnuson on or before *a date to be determined*.

This case must commence trial on *a date to be determined* before District Judge Paul A. Magnuson in Courtroom 7D, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, **SAINT PAUL**, Minnesota.

b. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for District Judge Paul A. Magnuson to confirm the new trial date.**

Dated: May 14, 2021

s/Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge